



Alamogordo Public Schools

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Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

November 12, 2010

Request for Waiver

CC Docket No. 02-6

Decision being addressed: Notification of Improperly Disbursed Funds Recovery Letter dated October 6, 2010, and Notification of Improperly Disbursed Funds Recovery Letter dated October 15, 2010

Form 471 Application Numbers: 529682 and 534697

FRN: 1464878 and 1478636

Funding Year: 2006 (7/1/2006 – 6/30/2007)

Billed Entity Number: 143365

SPIN: 143005231

Service Provider Name: Qwest Corporation

SPIN: 143022681

Service Provider Name: Tularosa Communications, Inc.

Applicant: Alamogordo Public School District
1211 Hawaii Avenue
Alamogordo, NM 88310

Applicant's Contact Person: George McDonald
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Alexandria, VA 22301-1808
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Dear Ms. Dortch:

On behalf of the Alamogordo Public Schools ("APS"), I am writing to request a waiver of FCC rules so that APS will not be required to repay \$3,123.42 and potentially more in E-rate funds disbursed on its behalf for FY 2006.

USAC has indicated it will seek recovery of \$3,123.42 because the technology plan did not cover the entire funding year for this funding request. We understand that the recovery amount is attributable to services prior to August 4, 2006, what USAC believes to be the effective date of the technology plan.

BACKGROUND

KPMG conducted an audit of APS during calendar year 2009. One of the findings of that audit was that:

"Alamogordo Public School District ("Beneficiary", "District" or "APS") did not obtain approval of their technology plan prior to the receipt of requested services for Funding Year ("FY") 2006. The technology plan approval letter relative to FY 2006 was dated August 4, 2006 and the start of services was July 1, 2006."

APS RESPONSE

APS responded to the audit finding as follows:

"The responsible party for the Funding Year 2006 is no longer with the District and his filing system for paperwork was lacking in organization. APS has maintained an approval letter for all funding years from 2003 – 2008 with the exception of FY 2006. We feel that this is a clerical error on the part of the previous responsible party and that the District's technology plan likely was approved prior to July 1, 2006."

ANALYSIS

The Commission has been forgiving in cases of tech plan approval dates in the past. In its Brownsville ISD Order (FCC 07-37, Released March 28, 2007), the Commission granted appeals by 32 schools and libraries of decisions by USAC that reduced or denied them E-rate funding because USAC determined that the funding requests were not supported by an approved technology plan. The Commission waived, in part, its technology plan rules in granting the appeals.

Paragraph 8 of the Order reads in part:

Based on the facts and the circumstances of these funding applications, we conclude that there is good cause to waive the applicable technology plan rules and to grant Petitioners' requests for review. . . . Additional Petitioners missed deadlines for developing or obtaining approval of their technology plans. USAC denied their

applications not because the applicants refused to develop or obtain approval of their technology plans, but because Petitioners failed to show that they had met the deadlines when USAC requested technology plan documentation. Indeed, many Petitioners thought they had complied with the deadlines and provided copies of their technology plans or approval letters when they responded to subsequent inquiries by USAC staff, when they appealed the funding decisions with USAC, or when they appealed the funding decisions with the Commission. We find that, given that these violations are procedural, not substantive, rejection of these Petitioners' E-rate applications is not warranted.

Paragraph 10 of the Order reads:

We also find that denying Petitioners' requests would create undue hardship and prevent these otherwise eligible schools and libraries from potentially receiving funding that they truly need to bring advanced telecommunications and information services their students and patrons. By contrast, waiving the applicable technology plan rules for these Petitioners and granting these requests will serve the public interest by preserving and advancing universal service. Although the technology plan requirements are necessary to guard against the waste of program funds, there is no evidence in the record that Petitioners engaged in activity to defraud or abuse the E-rate program. We further note that granting these requests should have minimal effect on the Fund as a whole. Therefore, we remand the appeals to USAC for further consideration consistent with this Order.

REQUEST

We ask that the Commission review our request for waiver in the spirit of the Brownsville Order: the funds at issue were used to bring Internet access to our students, repayment of the funds would hamper our ability to provide 21st Century educational technology to our students – a goal of universal service, APS did not attempt to defraud or abuse the E-rate program, and granting our request will have minimal effect on the Fund. We assume that USAC will eventually seek recovery on other APS FY 2006 FRNs and ask that, if you grant a waiver, you apply it all those FRNs.

Sincerely,

A handwritten signature in cursive script that reads "Ramona Becker".

Ramona Becker
Coordinator, Technology Support Services